Supreme Court of the United States

OCTOBER TERM, 1969

No. 265

GLADYS BODDIE ET AL.,

Appellants,

—v.—

CONNECTICUT ET AL.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Civil Docket 12513

3-JUDGE COURT

HON. J. JOSEPH SMITH, U.S.C.J.
HON. M. JOSEPH BLUMENFELD, U.S.D.J.
HON. T. EMMET CLARIE, U.S.D.J.

Jury demand date:

GLADYS BODDIE, BERTHA BARKER, ANN DE NICOLA, MARYANN DOZIER, BETTY ANN PEREZ, CATHERINE STRAIN, MARY WIERZBICKI, MAMIE WILLIAMS, MARY YEATON, and all other persons similarly situated

v.

THE STATE OF CONNECTICUT; EDWARD HORWITZ, Clerk of the Superior Court of Connecticut for New Haven County; JUDGE JOSEPH S. LONGO, Superior Court of Connecticut; JUSTICE JOHN P. COTTER, Court Administrator, Supreme Court of Connecticut

Of Counsel (For: Plaintiffs)
JACK GREENBERG
LEROY D. CLARK
PHILIP G. SCHRAG
Suite 2030
?0 Columbus Circle
New York, N. Y. 10019

For plaintiff:

ARTHUR B. LAFRANCE, New Haven Legal Assistance Assn., Inc., 768 Grand Avenue, New Haven, Conn.

Of Counsel:

JOSEPH M. SHORTALL (Same address as above).

SAMUEL W. BOWLBY (For: Civil Liberties Council), 205 Church St., P. O. Box 1936, New Haven, Conn. 06509

* See below

For all defendants:

ROBERT K. KILLIAN, Atty. General, RAYMOND J. CANNON, Asst. Atty. General, 30 Trinity Street, Hartford, Conn. 06115

EDWARD J. PETERS, JR., Assistant Attorney General.

Basis of Action: Action for Declaratory Judgment that the practices and statute 52 C.G.S.A., Sec. 257 (as modified by P.A. 89 of the 1967 Legislature) requiring payment of court fees and expenses is unconstitutional when applied to indigent plaintiffs; and for an injunction. Also requests 3-Judge Court.

DATE	PROCEEDINGS
1968	
4/20	Motion to Proceed in Forma Pauperis, filed by Plaintiffs. Order entered granting same. Blumenfeld, J. M-4/22/68 Copy mailed Atty LaFrance.
"	Complaint with attached affidavits, and Request for a 3-Judge Court pursuant to 28 U.S.C. Sec. 2281, et seq., filed.
"	Motion for Order that this Action is Maintainable as Class Action, filed by Plaintiffs.
"	Referred to Judge Blumenfeld.
4/23	Summons issued and together with copies of same and of Complaint, Motions and Order, handed to the Marshal for service.
4/26	Appearance of Arthur B. LaFrance entered for Plaintiffs.

DATE	PROCEEDINGS
1968	
4/30	Designation Of Judges, filed. The following judges, in addition to *Honorable M. Joseph Blumenfeld,* are designated to hear and determine said cause as provided by law: *Honorable J. Joseph Smith,* U. S. Circuit Judge, and Honorable *T. Emmet Clarie,* U. S. U. S. District Judge. IT IS HEREBY ORDERED that this order be filed in the above entitled cause in the said District Court. J. Edward Lumbard. C.J., U.S.Ct of Appeals, 2nd Circuit. M-4/30/68.
5/ 1	Three Folders, containing copies of all documents in this action (including docket entries) mailed to Judges Smith, Clarie and Blumenfeld, for their information.
"	Copies of Designation of Judges mailed to all three Judges, and Attorneys La France, and Shortell.
5/ 2	Motion To File Brief And Make Oral Argument As Amicus Curiae, and Notice of Motion, filed by Attorney Samuel W. Bowlby, for New Haven Civil Liberties Council.
5/ 4	Brief, filed by Plaintiffs. Copies mailed to 3 Judges.
5/ 6	Marshal's return showing service, filed (4) Summons and Complaint.
"	Three Folders mailed to respective Judges, after receipt of Marshal's Returns.
5/ 7	Certificate Of Service on Motion to File Brief and Make Oral Argument as Amicus Cruiae, filed by Attorney for New Haven Civil Liberties Council. Copies of Certificate of Service mailed to three Judges.
5/ 8	Appearance of Robert K. Killian, Attorney General and Raymond J. Cannon, Assistant Attorney General, entered for defendants State of Connecticut; Edward Horwitz, Clerk of the Superior Court of Conn. for New Haven County; Judge Joseph S. Longo, Superior Court of Conn.; and Justice John P. Cotter, Court Administrator, Supreme Court of Conn. Copies mailed to three Judges.

DATE	PROCEEDINGS
1968	
5/13	Hearing on Motion of New Haven Civil Liberties Council to File Brief and Make Oral Argument as Amicus Curiae. "Permission to file a brief as amicus curiae granted. Permission to make oral argument denied." Blumenfeld, J. Copies mailed Attys LaFrance, Atty Bowlby and State's Attorney. Copies to three Judges.
"	Appearance of Robert K. Killian, Attorney General, and Edward J. Peters, Jr., Assistant Attorney General, entered for defendants. Copies mailed 3 Judges
5/17	Motion to Extend Time (to and including June 10, 1968) to file a pleading, filed by Defendants. Copies mailed three Judges.
5/31	Order entered on Defendants' Motion to Extend the Time to File a Pleading, as follows: "Motion granted. The time for the defendants to plead is enlarged to June 10, 1968." Blumenfeld, J. M-5/31/68 Copies mailed to all counsel and to three Judges.
5/31	Endorsement entered on Motion To Extend The Time To File A Pleading, as follows: "Motion granted. The time for the defendants to plead is enlarged to June 10, 1968." Blumenfeld, J. M-6/3/68. Copies mailed to Attorneys LaFrance, Shortall, Bowlby, Killian, & to 3 Judges.
6/ 7	Appearance of Jack Greenberg, Leroy D. Clark and Philip G. Schrag, as of counsel for the plaintiffs, entered. Copies mailed 3 Judges.
"	Amendment to Complaint, filed. Copies mailed 3 Judges.
6/10	Motion to Dismiss and Notice of Motion, filed by Defendants. Copies to 3 Judges.
"	Brief in Support of Defendants' Motion for Dismissal, filed.

DATE	PROCEEDINGS
1968	
6/17	Copy of Memorandum Of Decision On Application Of Mable Davis Seeking Permission To Proceed in Forma Pauperis, (Opinion of Judge Healey of Connecticut Superior Court) filed by Plaintiff's Attorney for information purposes, in this case. One copy each mailed to Judges Smith, Blumenfeld and Clarie.
6/18	Memorandum of New Haven Civil Liberties Council, Amicus Curiae, In Response to Defendants' Motion to Dismiss, filed. Copies mailed to Three Judges.
6/20	Reply Brief of Plaintiffs, filed. Copies mailed three Judges.
6/24	Plaintiffs' Supplemental Memorandum re: Judicial Immunity from Suit, filed by Plaintiffs at Hartford. Copies handed 3 Judges.
"	Hearing on Defendants' Motion to Dismiss. Motion to Dismiss granted as to State of Conn. Decision Reserved. Smith, U.S.C.J.; Blumenfeld, U.S.D.J.; Clarie, U.S.D.J.
7/17	Memorandum of Decision on Motion to Dismiss, entered. Motion granted. Complaint dismissed. Judgment may enter dismissing the action. No further order is necessary. Smith, U.S.C.J.; Blumenfeld, U.S.D.J.; Clarie, U.S.D.J. M-7/17/68 Copies mailed to three Judges. Copies mailed to all counsel.
7/17	Judgment entered that plaintiffs take nothing and that the action be and it is hereby dismissed. Earl, C. M-7/18/68 Copies mailed to 3 Judges; to all counsel.
9/12	Notice of Appeal to the Supreme Court of the United States, filed by plaintiffs (except for Catherine Strain). Copies mailed Atty General; copies returned to Plaintiffs' attorneys.
9/27	Court Reporter's Notes of Proceedings of June 24, 1968, filed at Hartford. Sanders, R.
10/21	Affidavit of Helen Pigott, filed.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Docket No. 12513

April 15, 1968

[File Endorsement Omitted in Printing]

GLADYS BODDIE, BERTHA BARKER, ANN DE NICOLA, MARYANN DOZIER, BETTY ANN PEREZ, CATHERINE STRAIN, MARY WIERZBICKI, MAMIE WILLIAMS, MARY YEATON, and all other persons similarly situated, PLAINTIFFS

vs.

THE STATE OF CONNECTICUT; EDWARD HORWITZ, Clerk of the Superior Court of Connecticut for New Haven County; JUDGE JOSEPH S. LONGO, Superior Court of Connecticut; JUSTICE JOHN P. COTTER, Court Administrator, Supreme Court of Connecticut, DEFENDANTS

MOTION TO PROCEED IN FORMA PAUPERIS—
Filed April 20, 1968

Affiants hereby move this Court for permission to proceed *in forma pauperis*, respectfully representing, as to each affiant, that:

1. She is unable to pay the fees, costs and security incident to a proceeding in this Court (see financial affidavit attached as Exhibit "A" to the Complaint);
2. This action is one in which each affiant seeks a declaratory judgment and injunction because of the action by the State of Connecticut denying her application to prosecute a divorce action without payment of fees and costs;

3. She believes she is entitled to redress.

/s/ Gladys G. Boddie (L.S.) /s/ Mamie Williams (L.S.)
/s/ Betty Perez (L.S.) /s/ Catherine Strain (L.S.)
/s/ Maryann Dozier (L.S.) /s/ Bertha Barker (L.S.)
/s/ Ann De Nicola (L.S.) /s/ Mary R. Yeaton (L.S.)
/s/ Mary Wierzbicki (L.S.)

COUNTY OF NEW HAVEN)
) ss: New Haven Conn.
STATE OF CONNECTICUT) April 16, 1968

BEFORE ME this day personally appeared GLADYS BODDIE, BERTHA BARKER, ANN DE NICOLA, MARYANN DOZIER, BETTY ANN PEREZ, CATHERINE STRAIN, MARY WIERZBICKI, MAMIE WILLIAMS and MARY YEATON, known to me and known by me to be the persons who executed the above and foregoing affidavit and they acknowledged before me that they executed the same for the purposes therein expressed.

/s/ Ann J. Oppel
Notary Public
My Commission Expires
April 1, 1973

[SEAL]

ORDER

The foregoing Motion having been submitted to the Court, and good cause appearing therefor, on the basis of the finincial affidavits filed it is hereby

ORDERED, that plaintiffs be permitted to proceed *in forma pauperis* in this Court.

DATED this 19th day of April, 1968.

BY THE COURT

/s/ M. Joseph Blumenfeld
Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Docket No. Civil 12,513

April 15, 1968

[File Endorsement Omitted in Printing]

GLADYS BODDIE, BERTHA BARKER, ANN DE NICOLA, MARYANN DOZIER, BETTY ANN PEREZ, CATHERINE STRAIN, MARY WIERZBICKI, MAMIE WILLIAMS, MARY YEATON, and all other persons similarly situated, PLAINTIFFS

vs.

THE STATE OF CONNECTICUT; EDWARD HORWITZ, Clerk of the Superior Court of Connecticut for New Haven County; JUDGE JOSEPH S. LONGO, Superior Court of Connecticut; JUSTICE JOHN P. COTTER, Court Administrator, Supreme Court of Connecticut, DEFENDANTS

COMPLAINT—Filed April 20, 1968

1. This is an action for a declaratory judgment and injunction preventing the defendants from interfering with the plaintiffs' rights to equal protection and due process of laws under the Fourteenth Amendment to the United States Constitution; and the jurisdiction of this Court is invoked under 28 U.S.C., sections 1343(3), 2201, 2202 and 42 U.S.C., sections 1981, 1983, and 1988.

2. On March 13, 1968, the named plaintiffs applied to the Superior Court for New Haven County, asking that court to allow them to prosecute divorce proceedings without payment of filing or service fees, and, in support of their applications, they submitted divorce writs and financial affidavits (the affidavits submitted to the Superior Court are attached hereto as Exhibit "A" and incorporated herein by reference).

3. On March 14, 1968, defendant Edward Horwitz, Clerk of the Superior Court for New Haven County, rejected the applications and accompanying papers, on

the ground that he could not accept them until an entry fee had been paid.

4. On April 2, 1968, defendant Judge Joseph S. Longo, Superior Court Judge for the Family Relations Session of the Superior Court for New Haven County, and defendant Justice John P. Cotter, of the Connecticut Supreme Court, the Administrator for the Connecticut court system, both declined to grant the applications or allow the papers to be filed.

5. Court costs and expenses incident to a divorce proceeding normally are in excess of sixty dollars, since the entry fee required by 52 C.G.S., section 259 (as modified by P.A. 628 of the 1967 Legislature) is forty-five dollars; service by a sheriff is usually ten to fifteen dollars; service by publication may exceed one hundred dollars and service of subpoenas may be ten dollars each.

6. Each of the named plaintiffs is unable to pay the filing fees and costs of a divorce proceeding, since each is a recipient of welfare assistance from the State of Connecticut, which does not include an allowance for legal fees in its welfare allotments (see financial affidavits in Exhibit "A").

7. The named plaintiffs have therefore been denied access to the Courts of Connecticut solely because of inability to pay court fees and expenses, and have therefore been denied due process and equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution.

8. The named plaintiffs represent those persons similarly situated, who constitute a class encompassing those women in the State of Connecticut receiving welfare assistance from the State and who wish to obtain a divorce, but are barred from the Courts because of inability to pay the court fees and costs incident to a divorce proceeding; which class has a continuing existence, shares questions of law common to the class, and is too numerous to join in this proceeding.

WHEREFORE, plaintiffs pray this Court to:

(1) Convene a three judge court pursuant to 28 U.S.C., section 2281, et seq., to hear and determine this case;

(2) Declare the practice and the statute, 52 C.G.S.A. section 257 (as modified by P.A. 89 of the 1967 Legislature), requiring payment of court fees and expenses as a condition precedent to obtaining court relief as unconstitutional when applied to these indigent plaintiffs and all other members of the class which they represent;

(3) Enter a permanent injunction against defendants requiring them to:

(a) Accept for filing, without payment of fees and costs, the papers attached as Exhibit "A";
(b) Permit the named plaintiffs to proceed with their divorce actions without payment of fees and costs;
(c) Effect all necessary service and notice incident to the divorce actions without payment of fees and costs by the named plaintiffs;
(d) Take similar action with respect to future divorce proceedings initiated by other members of the class represented by the named plaintiffs.

THE DEFENDANTS

By /s/ Arthur B. LaFrance
Their Attorney

Of Counsel:

/s/ Joseph M. Shortall ABL

EXHIBIT "A" TO COMPLAINT

SUPERIOR COURT, NEW HAVEN COUNTY

March 11, 1968

No.

GLADYS BODDIE

vs.

JOHN LEE BODDIE

FINANCIAL AFFIDAVIT

Affiant hereby respectfully represents that:

1. She is the plaintiff in the above-captioned proceeding.

2. Her income consists solely of an allotment received from the Department of Welfare, State of Connecticut, totalling $361.50 per month.

3. On the above income she supports herself and six children.

4. The normal monthly expenses incurred for herself and her children are as follows:

	$141.00	
Food	100.00	
Rent	26.00	
Utilities	50.00	
Clothing	5.00	
Laundry	10.00	
Household	10.00	
Transportation	12.00	
Entertainment	8.00	
Education	5.00	water bill
Miscellaneous		
Total	$367.00	

5. She has no assets or property other than personal items, such as clothing or jewelry, and necessary household furniture, all with an approximate value of $600.00.

6. Her welfare benefits from the State of Connecticut do not include an allotment for legal and court fees.

7. She has no income, property or assets from which she can afford to pay the fees, costs, expenses and security in the proceeding.

8. Her attorney is serving without fee in this case.

/s/ Gladys G. Boddie [SEAL]

Sworn to and subscribed before me this 27 day of February, 1968.

/s/ Ann J. Oppel
Notary Public
My Commission Expires
April 1, 1973

EXHIBIT "A" TO COMPLAINT

SUPERIOR COURT, NEW HAVEN COUNTY

March 11, 1968

No.

ANN DE NICOLA

vs.

JULIO DE NICOLA

FINANCIAL AFFIDAVIT

Affiant hereby respectfully represents that:

1. She is the plaintiff in the above-captioned proceeding.
2. Her income consists solely of an allotment received from the Department of Welfare, State of Connecticut, totalling $100.00 per month.
3. On the above income she supports herself and 1 children.
4. The normal monthly expenses incurred for herself and her children are as follows:

Food	$ 60.00
Rent	70.00
Utilities	16.90
Clothing	15.00
Laundry	—
Household	3.00
Transportation	—
Entertainment	—
Education	—
Miscellaneous	16.00
Total	$180.90

5. She has no assets or property other than $80.00 monthly from 1st husb. for son's support, personal items,

such as clothing or jewelry, and necessary household furniture, all with an approximate value of $300.00.

6. Her welfare benefits from the State of Connecticut do not include an allotment for legal and court fees.

7. She has no income, property or assets from which she can afford to pay the fees, costs, expenses and security in the proceeding.

8. Her attorney is serving without fee in this case.

/s/ Ann De Nicola [SEAL]

Sworn to and subscribed before me this 4th day of March, 1968.

/s/ Ann J. Oppel
Notary Public

My Commission Expires:
4/1/73

EXHIBIT "A" TO COMPLAINT

SUPERIOR COURT, NEW HAVEN COUNTY

March 11, 1968

No.

MARYANN DOZIER

vs.

SAMUEL DOZIER

FINANCIAL AFFIDAVIT

Affiant hereby respectfully represents that:

1. She is the plaintiff in the above-captioned proceeding.
2. Her income consists solely of an allotment received from the Department of Welfare, State of Connecticut, totalling $240.00 per month.
3. On the above income she supports herself and three children.
4. The normal monthly expenses incurred for herself and her chaldren are as follows:

Food	$100.00
Rent	126.00
Utilities	—
Clothing	10.00
Laundry	2.00
Household	2.00
Transportation	—
Entertainment	—
Education	—
Miscellaneous	—
Total	$240.00

5. She has no assets or property other than personal items, such as clothing or jewelry, and necessary household furniture, all with an approximate value of $159.50.

6. Her welfare benefits from the State of Connecticut do not include an allotment for legal and court fees.

7. She has no income, property or assets from which she can afford to pay the fees, costs, expenses and security in the proceeding.

8. Her attorney is serving without fee in this case.

/s/ Maryann Dozier [SEAL]

Sworn to and subscribed before me this 5th day of March, 1968.

/s/ Arthur B. LaFrance
Commissioner of the
Superior Court

EXHIBIT "A" TO COMPLAINT

SUPERIOR COURT, NEW HAVEN COUNTY

March 11, 1968

No.

MARY WIERZBICKI

vs.

EDWARD JAMES WIERZBICKI

FINANCIAL AFFIDAVIT

Affiant hereby respectfully represents that:

1. She is the plaintiff in the above-captioned proceeding.
2. Her income consists solely of an allotment received from the Department of Welfare, State of Connecticut, totalling $66.16 per month.
3. On the above income she supports herself and children.
4. The normal monthly expenses incurred for herself and her children are as follows:

Food		$28.00	
Rent		85.00	welfare pays
Utilities		14.00	
Clothing		2.00	
Laundry		—	
Household		2.00	
Transportation		2.00	
Entertainment		—	
Education		—	
Miscellaneous		20.00	
	Total	$68.00	Excluding Rent

5. She has no assets or property other than personal items, such as clothing or jewelry, and necessary household furniture, all with an approximate value of $100.00.

6. Her welfare benefits from the State of Connecticut do not include an allotment for legal and court fees.

7. She has no income, property or assets from which she can afford to pay the fees, costs, expenses and security in the proceeding.

8. Her attorney is serving without fee in this case.

/s/ Mary Wierzbicki [SEAL]

Sworn to and subscribed before me this 6th day of March, 1968.

/s/ Ann J. Oppel
Commissioner of the
Superior Court

My Commission Expires: April 1, 1973

EXHIBIT "A" TO COMPLAINT

SUPERIOR COURT, NEW HAVEN COUNTY

March 11, 1968

No.

MAMIE WILLIAMS

vs.

OCTAVIOUS WILLIAMS

FINANCIAL AFFIDAVIT

Affiant hereby respectfully represents that:

1. She is the plaintiff in the above-captioned proceeding.
2. Her income consists solely of an allotment received from the Department of Welfare, State of Connecticut, totalling $362.20 per month.
3. On the above income she supports herself and six (6) children.
4. The normal monthly expenses incurred for herself and her children are as follows:

Food	$	
Rent		
Utilities		
Clothing		$360.20
Laundry		
Household		
Transportation		
Entertainment	5.40	
Education	3.00	
Miscellaneous	2.26	
Total	$370.86	

5. She has no assets or property other than personal items, such as clothing or jewelry, and necessary household furniture, all with an approximate value of $.

6. Her welfare benefits from the State of Connecticut do not include an allotment for legal and court fees.

7. She has no income, property or assets from which she can afford to pay the fees, costs, expenses and security in the proceeding.

8. Her attorney is serving without fee in this case.

/s/ Mamie Williams [SEAL]

Sworn to and subscribed before me this 8 day of March, 1968.

/s/ Ann J. Oppel
Commissioner of the
Superior Court

My Commission Expires: April 1, 1973

EXHIBIT "A" TO COMPLAINT

SUPERIOR COURT, NEW HAVEN COUNTY

March 11, 1968

No.

CATHERINE STRAIN

vs.

WALTER STRAIN

FINANCIAL AFFIDAVIT

Affiant hereby respectfully represents that:

1. She is the plaintiff in the above-captioned proceeding.
2. Her income consists solely of an allotment received from the Department of Welfare, State of Connecticut, totalling $204.00 per month.
3. On the above income she supports herself and Five children.
4. The normal monthly expenses incurred for herself and her children are as follows:

Food	$ 79.00		
Rent	120.00	welfare pays	
Utilities	—		
Clothing			
Laundry			
Household		$118.95	
Transportation			
Entertainment			
Education			
Miscellaneous	6.05		
Total	$204.00		

5. She has no assets or property other than personal items, such as clothing or jewelry, and necessary household furniture, all with an approximate value of $150.00.

6. Her welfare benefits from the State of Connecticut do not include an allotment for legal and court fees.

7. She has no income, property or assets from which she can afford to pay the fees, costs, expenses and security in the proceeding.

8. Her attorney is serving without fee in this case.

/s/ Catherine Strain [SEAL]

Sworn to and subscribed before me this 4 day of March, 1968.

/s/ Ann J. Oppel
Notary Public

My Commission Expires: April 1, 1974

EXHIBIT "A" TO COMPLAINT

SUPERIOR COURT, NEW HAVEN COUNTY

March 11, 1968

No.

BERTHA BARKER

vs.

DONALD BARKER

FINANCIAL AFFIDAVIT

Affiant hereby respectfully represents that:

1. She is the plaintiff in the above-captioned proceeding.
2. Her income consists solely of an allotment received from the Department of Welfare, State of Connecticut, totalling $282.00 per month.
3. On the above income she supports herself and 3 (three) children.
4. The normal monthly expenses incurred for herself and her children are as follows:

Food	$120.00	
Rent	80.00	welfare pays
Utilities	30.00	
Clothing	15.00	
Laundry	6.00	
Household	2.00	
Transportation	3.00	
Entertainment	3.00	
Education	2.06	
Miscellaneous	21.00	
Total	$282.06	

5. She has no assets or property other than personal items, such as clothing or jewelry, and necessary household furniture, all with an approximate value of $200.00.

6. Her welfare benefits from the State of Connecticut do not include an allotment for legal and court fees.

7. She has no income, property or assets from which she can afford to pay the fees, costs, expenses and security in the proceeding.

8. Her attorney is serving without fee in this case.

/s/ Bertha Barker [SEAL]

Sworn to and subscribed before me this 5th day of March, 1968.

/s/ Arthur B. LaFrance
Commissioner of the
Superior Court

EXHIBIT "A" TO COMPLAINT

SUPERIOR COURT, NEW HAVEN COUNTY

March 11, 1968

No.

MARY YEATON

vs.

CLYDE YEATON

FINANCIAL AFFIDAVIT

Affiant hereby respectfully represents that:

1. She is the plaintiff in the above-captioned proceeding.
2. Her income consists solely of an allotment received from the Department of Welfare, State of Connecticut, totalling $209.40 per month.
3. On the above income she supports herself and two children.
4. The normal monthly expenses incurred for herself and her children are as follows:

Food	$ 80.00
Rent	30.00
Utilities	—
Clothing	25.00
Laundry	2.00
Household	5.00
Transportation	5.00
Entertainment	3.00
Education	42.50
Miscellaneous	17.00
Total	$209.50

5. She has no assets or property other than personal items, such as clothing or jewelry, and necessary household furniture, all with an approximate value of $150.00.

6. Her welfare benefits from the State of Connecticut do not include an allotment for legal and court fees.

7. She has no income, property or assets from which she can afford to pay the fees, costs, expenses and security in the proceeding.

8. Her attorney is serving without fee in this case.

/s/ Mary Yeaton [SEAL]

Sworn to and subscribed before me this 5th day of March, 1968.

/s/ Arthur B. LaFrance
Commissioner of the
Superior Court

EXHIBIT "A" TO COMPLAINT

SUPERIOR COURT, NEW HAVEN COUNTY

March 11, 1968

No.

BETTY ANN PEREZ

vs.

LOUIS PEREZ

FINANCIAL AFFIDAVIT

Affiant hereby respectfully represents that:

1. She is the plaintiff in the above-captioned proceeding.
2. Her income consists solely of an allotment received from the Department of Welfare, State of Connecticut, totalling $166.00 per month.
3. On the above income she supports herself and (3) three children.
4. The normal monthly expenses incurred for herself and her children are as follows:

Food	$103.00	
Rent	88.00	welfare pays
Utilities	—	
Clothing	15.00	
Laundry	2.00	
Household	14.00	
Transportation	—	
Entertainment	—	
Education	9.00	
Miscellaneous	22.50	
Total	$165.50	excluding rent

5. She has no assets or property other than personal items, such as clothing or jewelry, and necessary household furniture, all with an approximate value of $200.00.

6. Her welfare benefits from the State of Connecticut do not include an allotment for legal and court fees.

7. She has no income, property or assets from which she can afford to pay the fees, costs, expenses and security in the proceeding.

8. Her attorney is serving without fee in this case.

/s/ Mrs. Betty Perez [SEAL]

Sworn to and subscribed before me this 26 day of February, 1968.

/s/ Ann J. Oppel
Notary Public

My Commission Expires:
April 1, 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Docket No. Civil 12,513

April 15, 1968

[File Endorsement Omitted in Printing]

GLADYS BODDIE, ET ALS.

vs.

THE STATE OF CONNECTICUT, ET ALS.

MOTION FOR ORDER THAT THIS ACTION IS MAINTAINABLE AS A CLASS ACTION—Filed April 20, 1968

The plaintiffs hereby move for an order that this action should be maintained as a class action and represent that:

1. The class to be represented is composed of women residing in Connecticut, receiving welfare assistance from the State, who wish to obtain a divorce, but are barred from the courts because of inability to pay the court fees and costs incident to a divorce proceeding.
2. This class is so numerous that joinder of all members would be impracticable.
3. There are questions of law or fact common to the class.
4. The claims of the representative parties are typical of the claims of the class.
5. The representative parties will fairly and adequately protect the interests of the class.
6. The question of law which is common to the members of the class predominates over questions which might affect individual members and thus a class action is superior to individual litigation for the fair and efficient adjudication of the controversy.

THE PLAINTIFFS

By /s/ Arthur B. LaFrance
Their Attorney

ORDER

The foregoing motion having been submitted to the Court, and good cause appearing therefor, it is hereby

ORDERED, that the action is hereby declared to be a class action and the named plaintiffs have the status of representatives of the class.

DATED this ..... day of April, 1968.

BY THE COURT

.....

Judge

[Summons With Marshal's Return Thereon (Omitted in Printing)]

[Appearance of Arthur B. LaFrance Omitted in Printing)]

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Civil No. 12,513

[File Endorsement Omitted in Printing]

GLADYS BODDIE, BERTHA BARKER, ANN DE NICOLA, MARYANN DOZIER, BETTY ANN PEREZ, CATHERINE STRAIN, MARY WIERZBICKI, MAMIE WILLIAMS, MARY YEATON, and all other persons similarly situated, PLAINTIFFS

v.

THE STATE OF CONNECTICUT; EDWARD HORWITZ, Clerk of the Superior Court of Connecticut for New Haven County; JUDGE JOSEPH S. LONGO, Superior Court of Connecticut; JUSTICE JOHN P. COTTER, Court Administrator, Supreme Court of Connecticut, DEFENDANTS

DESIGNATION OF JUDGES—Filed April 30, 1968

Having been notified by the Honorable M. Joseph Blumenfeld, United States District Judge for the District of Connecticut, that an application has been filed in the above matter for relief pursuant to Title 28 United States Code Section 2281, pursuant to Title 28 United States Code Section 2284 I hereby designate the following judges, in addition to the Honorable M. Joseph Blumenfeld, to hear and determine said cause as provided by law: Honorable J. Joseph Smith, United States Circuit Judge, and Honorable T. Emmet Clarie, United States District Judge for the District of Connecticut.

IT IS HEREBY ORDERED that this order be filed in the above entitled cause in the said District Court.

/s/ J. Edward Lumbard
Chief Judge,
United States Court of Appeals
for the Second Circuit

Dated: New York, N. Y.
April 25, 1968

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Civil Action No. 12,513

[File Endorsement Omitted in Printing]

GLADYS BODDIE, ET ALS., PLAINTIFF

vs.

STATE OF CONNECTICUT, ET ALS., DEFENDANT

NOTICE OF MOTION—Filed May 2, 1968

[Permission to file a brief as amicus curiae granted. Permission to make oral argument denied. M.J.B. 5-13-68]

TO: United States Attorney
United States Courthouse
New Haven, Connecticut

Arthur B. LaFrance, Esquire
768 Grand Avenue
New Haven, Connecticut

Dear Sirs:

PLEASE TAKE NOTICE that the New Haven Civil Liberties Council will bring its motion to obtain permission to file a brief and make oral argument as *amicus curiae* before the United States District Court for the District of Connecticut for a hearing on Monday, May 13, 1968, at 10:09 A.M., at Hartford, Connecticut or as soon thereafter as counsel may be heard.

Dated at New Haven, Connecticut this 2nd day of May, 1968.

NEW HAVEN CIVIL
LIBERTIES COUNCIL

By: /s/ Samuel W. Bowlby
205 Church Street
P.O. Box 1936
New Haven, Connecticut 06509
—Attorney for New Haven
Civil Liberties Council—

* * * *

Civil Action No. 12,513

MOTION TO FILE BRIEF AND MAKE ORAL ARGUMENT AS AMICUS CURIAE—Filed May 2, 1968

Comes now The New Haven Civil Liberties Council and moves the Court for permission to file a brief and make oral argument as *amicus curiae* on the issues of the violation of the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution as raised in the Plaintiff's Complaint.

Dated at New Haven, Connecticut this 2nd day of May, 1968.

NEW HAVEN CIVIL LIBERTIES COUNCIL

By: /s/ Samuel W. Bowlby

[Certificates of Service (Omitted in Printing)]

[Appearance of Raymond J. Cannon (Omitted in Printing)]

[Appearance of Edward J. Peters, Jr. (Omitted in Printing)]

[Motion to extend the time to file a pleading with endorsement thereon (Omitted in Printing)]

[Appearance of Jack Greenberg, Leroy D. Clark and Philip G. Schrag (Omitted in Printing)]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Civil Action No. 12513

[File Endorsement Omitted in Printing]

GLADYS BODDIE, ET ALS., PLAINTIFFS

vs.

STATE OF CONNECTICUT, ET ALS., DEFENDANTS

AMENDMENT TO COMPLAINT—Filed June 7, 1968

The plaintiffs hereby amend their complaint in the following particulars:

1. by adding the following paragraph:

"9. Four of the named plaintiffs are of the Negro race."

2. by amending the prayer for relief, substituting the following for the second clause:

"(2). Declare the practice and the statute, 52 C.G.S.A., section 259 (as modified by P.A. 628 of the 1967 Legislature), requiring payment of court fees and expenses as a condition precedent to obtaining court relief as unconstitutional when applied to these indigent plaintiffs and all other members of the class which they represent;"

THE PLAINTIFFS

By /s/ Arthur B. LaFrance
Their Attorney
768 Grand Avenue
New Haven, Connecticut

[Certificate of Service (Omitted in Printing)]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Civil Action No. 12513

[File Endorsement Omitted in Printing]

GLADYS BODDIE ET AL, PLAINTIFFS

vs.

STATE OF CONNECTICUT ET AL, DEFENDANTS

MOTION TO DISMISS—Filed June 10, 1968

The defendants, State of Connecticut, Edward Horwitz, Clerk of the Superior Court of Connecticut for New Haven County, Judge Joseph S. Long, Superior Court Judge of the State of Connecticut, and Justice John P. Cotter, Supreme Court Justice and Chief Court Administrator for the State of Connecticut, pursuant to Rule 12 (b) of the Federal Rules of Civil Procedure, hereby move the Court as follows:

1. To dismiss the action because the Complaint fails to state a claim against the defendants upon which relief can be granted.
2. To dismiss the action or in lieu thereof to quash the return of service of summons on the ground that the defendant, State of Connecticut, has not been properly served with process in this action.
3. To dismiss the action because the named defendants are immune from suit under the named Civil Rights Acts.
4. To dismiss the action because the Complaint fails to state a cause of action showing the deprivation of

any rights, privileges or immunities secured by the Constitution and Laws of the United States.

DEFENDANTS:

STATE OF CONNECTICUT,
EDWARD HORWITZ,
JUDGE JOSEPH S. LONGO,
JUSTICE JOHN P. COTTER

By: ROBERT K. KILLIAN
Attorney General

/s/ Raymond J. Cannon
Assistant Attorney General

/s/ Edward J. Peters, Jr.
Assistant Attorney General

NOTICE OF MOTION

TO: GLADYS BODDIE, BERTHA BARKER, ANN DE NICOLA, MARYANN DOZIER, BETTY ANN PEREZ, CATHERINE STRAIN, MARY WIERZBICKI, MAMIE WILLIAMS, MARY YEATON, and all other persons similarly situated, *Plaintiffs*

Please take notice that the undersigned will bring the above motion on for hearing before this Court at the Federal Office Building, 450 Main Street, Hartford, Connecticut, on the 24th day of June, 1968, at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

(Signed) Edward J. Peters, Jr.
Attorney for the Defendants
30 Trinity Street
Hartford, Connecticut 06115

[Certificate of Service (Omitted in Printing)]

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Civil No. 12513

[File Endorsement Omitted in Printing]

GLADYS BODDIE, BERTHA BARKER, ANN DE NICOLA, MARYANN DOZIER, BETTY ANN PEREZ, CATHERINE STRAIN, MARY WIERZBICKI, MAMIE WILLIAMS, MARY YEATON, and all other persons similarly situated, PLAINTIFFS

v.

THE STATE OF CONNECTICUT; EDWARD HORWITZ, Clerk of the Superior Court of Connecticut for New Haven County; JUDGE JOSEPH S. LONGO, Superior Court of Connecticut; JUSTICE JOHN P. COTTER, Court Administrator, Supreme Court of Connecticut, DEFENDANTS

Before: SMITH, Circuit Judge, BLUMENFELD and CLARIE, District Judges.

ARTHUR B. LAFRANCE and JOSEPH M. SHORTALL, New Haven Assistance Association, Inc., New Haven, Connecticut, for Plaintiffs.

JACK GREENBERG, LEROY D. CLARK, and PHILIP G. SCHRAG, New York, N.Y., for Plaintiffs.

SAMUEL W. BOWLBY, New Haven, Conn., for New Haven Civil Liberties Council, *amicus curiae*.

ROBERT K. KILLIAN, Attorney General, State of Connecticut, RAYMOND J. CANNON, Asst. Attorney General, and EDWARD J. PETERS, JR., Asst. Attorney General, Hartford, Connecticut, for Defendants.

MEMORANDUM OF DECISION ON MOTION TO DISMISS—
July 16, 1968

SMITH, Circuit Judge.

This case presents the question whether a state denies the equal protection of the laws guaranteed by the Four-

teenth Amendment when it requires indigent persons seeking divorce to pay filing fees and costs which they are unable to pay before allowing them the access to the state courts which is necessary to obtaining a divorce.

The plaintiffs have brought this class action on behalf of those women in the State of Connecticut receiving welfare assistance from the State who wish to obtain divorce, but are allegedly barred from doing so by reason of their inability to pay the court fees and costs incident to a divorce proceeding. They seek a declaratory judgment that C.G.S.A. § 52-259 (as amended by Sec. 3, Public Act #628, 1967 Legislature), requiring payment of court fees, is unconstitutional as applied to the class they represent, and an injunction requiring the defendants to permit these plaintiffs (and other members of the class in future proceedings) to proceed with their divorce actions without payment of any fees and costs, and requiring the defendants to effect all necessary service and notice incident to the divorce actions without cost to the plaintiffs.

Plaintiffs rely upon 42 U.S.C. §§ 1981, 1983, and 1988 for a cause of action, upon 28 U.S.C. § 1343(3) for this court's jurisdiction, and upon 28 U.S.C. §§ 2201 and 2202 for the remedy of declaratory judgment and further relief based upon any declaratory judgment which might issue. Since plaintiffs seek an injunction restraining the enforcement of a State statute, a three-judge District Court has been convened. 28 U.S.C. §§ 2281, 2284.

The named defendants are the State of Connecticut; Edward Horwitz, Clerk of the Superior Court for New Haven County; Hon. Joseph S. Longo, a Judge of the Superior Court; and Hon. John P. Cotter, a Justice of the Connecticut Supreme Court and the Chief Court Administrator of Connecticut's judicial system. The plaintiffs allege in their complaint that on March 13, 1968 they applied to the Superior Court for New Haven County, asking that they be permitted to prosecute divorce proceedings without payment of filing or service fees, and submitting financial affidavits; that on March 14 the defendant Horwitz rejected the applications and accompanying papers on the ground that he could not accept them until an entry fee had been paid; and on April 2 the defendants

Longo and Cotter declined to grant the applications or allow the papers to be filed. It is further alleged that court costs and expenses incident to a divorce proceeding are normally in excess of sixty dollars, the entry fee being forty-five dollars and the cost of service being ten to fifteen dollars by sheriff and one hundred dollars or more by publication, and that the plaintiffs are unable to pay the fees and costs. It is claimed that the State of Connecticut is denying the plaintiffs the equal protection of the laws by barring them from seeking a divorce because of their indigency, and is denying them due process of law by infringing their right to "petition the Government for a redress of grievances", U.S. CONST. Am. I.

The defendants have moved to dismiss the complaint upon the following grounds: (1) the complaint does not draw into question the constitutionality of any state statute, and therefore it was improper to convene a three-judge court (although the motion papers do not request that the three-judge court be dismissed, we assume that it is that, and not dismissal of the complaint, which defendants request on the basis of this argument); (2) the notice provisions of 28 U.S.C. § 2284(2) have not been complied with; (3) the State of Connecticut may not be sued, and the individual defendants are immune from suit as judicial officers acting in a judicial capacity; and (4) failure to state a cause of action.

The first three issues raised by the defendants can be disposed of briefly.

(1) Defendants argue that since the general constitutionality of the Connecticut statute (C.G.S.A. § 52-259, as amended) is not questioned, plaintiffs only attacking the statute as it applies to indigents, there should be no three-judge panel in this case. They rely upon the language in *Benoit* v. *Gardner*, 351 F.2d 846, 848 (1 Cir. 1965), stating that no three-judge court is required where an injunction is sought on the ground that a valid statute is being executed in an unconstitutional manner. The argument misconceives the issue. Where an injunction is sought against enforcement of a state statute in a manner unquestionably expressive of the legislative intent,

a three-judge court is required, even if the statute might be perfectly constitutional in some of its intended application. As the Supreme Court succinctly put it in *Phillips* v. *United States*, 312 U.S. 246, 251 (1941), "The crux of the business is procedural protection against an improvident state-wide doom by a federal court of a state's legislative policy." See also *Evergreen Review, Inc.* v. *Cahn*, 230 F.Supp. 498, 502 (E.D.N.Y. 1964); and *Poindexter* v. *Louisiana Financial Assistance Commission*, 258 F.Supp. 158, 165 (E.D. La. 1966). There is no question but that the Connecticut legislature intends the statute to apply to indigents as well as non-indigents; indeed, that is the thrust of the defendants' argument on the mertis. The defendants have no discretion in the enforcement of the statute—as they point out, there is no statutory provision for the waiver of entry fees in a divorce action.

(2) 28 U.S.C. § 2284(2) provides, in relevant part: "If the action involves the enforcement, operation or execution of State statutes or State administrative orders, at least five days notice of the hearing shall be given to the governor and attorney general of the State." We find no merit in the argument in defendants' brief that this requirement has not been complied with, since the defendants were served, the attorney general entered an appearance, defendants' brief was filed *fourteen* days in advance of the hearing on the motion to dismiss, and no hearing has yet been set on the application for injunction.

(3) Plaintiffs concede that the State of Connecticut is not a proper party to this action. At the hearing on the motion the complaint was therefore dismissed as to the State. See, e.g., *Serrano* v. *State of California*, 361 F.2d 474 (9 Cir. 1966).

The argument that the individual defendants are immune from suit as judicial officers of the State of Connecticut acting in their judicial capacities is not sound. The defendant Horwitz is not a judicial officer. As to defendants Longo and Cotter, it is clear, of course, that judges are immune from liability for damages for actions taken in the exercise of the judicial function. *Pierson* v. *Ray*, 386 U.S. 547, 553-54 (1967). The rationale of

the rule is that a judge should not have to fear litigation by those unsatisfied with his treatment of their cases. Although there is language in some of the cases stating the rule as one of absolute immunity from suit, we have found no cases applying the rule where it would absolutely bar an action for an injunction or mandamus against proposed actions beyond the powers of a judge.

Moreover, these defendants are acting in an administrative capacity in barring the plaintiffs from bringing their divorce actions without the payment of fees and costs. In short, they are entrusted with administration of the statute, a function quite different from the judicial function, exercised for example by Judge Healey of the Connecticut Superior Court in *Davis* v. *Davis* (unpublished opinion, in the file in this case), denying an application to proceed in forma pauperis in a divorce action upon a full consideration of the merits of the applicants' arguments.

If the defendants' argument were correct, a state could immunize any unconstitutional policy against the injunctive power of the federal courts by entrusting its administration to an officer of its judicial branch. The proper defendant in a case such as this one is the state's agent in the implementation of the allegedly unconstitutional policy; and the defendants do not allege that any officer of the State of Connecticut other than themselves is entrusted with administration of the statute. Cf. *Dorsey* v. *State Athletic Commission*, 168 F.Supp. 149, 151 (E.D. La. 1958), aff'd per curiam, 359 U.S. 533. See also *Robichaud* v. *Ronan*, 351 F.2d 533, 536-37 (9 Cir. 1965). The individual defendants are not immune from this suit.

(4) This brings us to the heart of the matter. May a state limit access to its civil courts and particularly in this instance, to its divorce courts, by the requirement of a filing fee or other fees which effectively bar persons on relief from commencing actions therein?[1]

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[1] While the complaint herein may be defective in failing to show that any of the plaintiffs are eligible for divorce by residence and possession of non-frivolous grounds under Connecticut law, such deficiencies could be cured by amendment. In any case, the defendants' attack is directed primarily to the fundamental basis of the complaint, and we see no reason not to reach it here.

Taking the factual allegations of the complaint as true, as we must on a motion to dismiss, 2A Moore's Fed. Prac. 2d ed. 1968, ¶ 12.08 n.3, *Clark* v. *Uebersee Finanz Korp.*, 332 U.S. 480 (1947), we must assume that these plaintiffs are effectively barred from bringing suit by the filing fee and other costs. We will assume further that the $45 filing fee alone is a sufficient bar in the case of some at least of the plaintiffs. Since anyone who pays the fees may at least file his complaint, it is plain that there is in effect a classification of prospective civil suitors between those able to afford the court costs and those unable to afford them.

Plaintiffs insist that such a classification, based solely on affluence (or poverty) is inadmissible as in violation of equal protection of the laws and due process. Plaintiffs argue with considerable force that access to the civil courts and particularly in domestic relations cases is a right of great importance, comparable to the right of freedom from imprisonment on unjust conviction of crime enforced in criminal and habeas corpus cases, so that its exercise may not be unequally restricted, under the teaching of, e.g., *Griffin* v. *Illinois*, 351 U.S. 12 (1956), *Smith* v. *Bennett*, 365 U.S. 708 (1961), *Lane* v. *Brown*, 372 U.S. 477 (1962).

But there are, of course, differences between the right to freedom from capital punishment or imprisonment and the right of access to civil courts to adjudicate claims to money or property or adjust marital status.

We have not yet gone so far as to hold that no state services may be conditioned on payment of fees, cf. *Harper* v. *Virginia Bd. of Elections*, 383 U.S. 663, 668 (1966), so long as the fees are reasonably considered by the legislature to be required for legitimate state purposes. However, it may be noted that the dissent from the denial of certiorari in *Williams* v. *Shaffer*, 385 U.S. 1037 (1967) demonstrates that at least three members of the Supreme Court would bar requirements of such fees from the indigent, at least in eviction cases. As Mr. Justice Douglas has reminded us, speaking for the Court in *Harper* v. *Virginia Bd. of Elections*, supra at 669:

> We agree, of course, with Mr. Justice Holmes that the Due Process Clause of the Fourteenth Amendment "does not enact Mr. Herbert Spencer's Social Statics" (*Lochner* v. *New York*, 198 U.S. 45, 75). Likewise, the Equal Protection Clause is not shackled to the political theory of a particular era. In determining what lines are unconstitutionally discriminatory, we have never been confined to historic notions of equality, any more than we have restricted due process to a fixed catalogue of what was at a given time deemed to be the limits of fundamental rights. See *Malloy* v. *Hogan*, 378 U.S. 1, 5-6. Notions of what constitutes equal treatment for purposes of the Equal Protection Clause *do* change.

Our problem is whether and to what extent the political theories of the role of the state toward the indigent have changed as reflected in present "notions of what constitutes equal treatment for purposes of the Equal Protection Clause . . ." Political theories of this role are changing in the particular field brought before us in this action, as witnessed by the provision for in forma pauperis civil actions by the Congress and many, perhaps most, of the states.[2] But failure of the other states, including Connecticut, to keep up with this developing trend has not yet been considered by any court to constitute a lack of equal treatment under the Equal Protection Clause.

There are distinctions between the cases involving imprisonment, denial of voting rights and the ordinary civil actions. The relative importance of the subject with respect to which equality is sought must also be taken into account.[3] The right to freedom from unjust imprisonment and the right of franchise were of particular concern to the framers of the Constitution and Bill of Rights and the post-Civil War amendments. Moreover, in the criminal, habeas corpus and eviction cases there is some direct state action involved, not present in most private

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[2] See the Indigent's Right to Counsel in Civil Cases, 76 Y.L.J. 545, 559 n.68 (1967).

[3] In *Harper* the court said at p. 670, "the right to vote is too precious, too fundamental to be so burdened or conditioned".

civil actions, a factor which may have some weight in denying the state a right to discriminate in the first mentioned type of action by fee requirements. In the ordinary civil (including divorce) case the state has no such direct participation, merely providing the judicial machinery for determination of the disputes. And the state does have at least two legitimate purposes in court fees, first, providing financial support for the court establishment (perhaps one-fifth of its cost in Connecticut, we are told), and second, discouraging resort to litigation in purely frivolous matters, which might much more often be filed by indigent and affluent alike if the service were entirely free from cost.

It is, however, entirely possible that the failure of the state to provide in forma pauperis relief in the civil courts is the product, not of considered choice or deliberate classification, but rather of inertia born of lack of existence of the problems of the indigent in present proportions, or at least lack of recognition of their present extent as it affects availability to the indigent of the processes of the civil courts open to others. In these circumstances we should hesitate to act in any case until the ordinary political processes have an opportunity to function in normal course.

Many states—at least 23, we are told, as well as the United States, provide that indigents may proceed in the civil courts in forma pauperis, without payment of fees. We agree that this is desirable, and that Connecticut might well follow the example and remove the discrimination now suffered by the indigent in access to the civil courts. But we do not feel that the present system, undesirable as it is, is a denial of a right so fundamental that the Constitution, by the equal protection or due process clause, forbids the state from its continuance.

Militating against striking down the present fee legislation by judicial fiat is the extreme difficulty of judicial determination of the course the state should be required to follow. Should the relief agencies provide the fees as part of support to the indigent? From what source should such funds be obtained, and how should they be administered? Should the state courts be required to waive

court fees for the indigent? The choice of which method is more fitted to the needs and policy of the state is a legislative choice the courts should take on only if necessary. Likewise with related matters. Should the state pay for the indigent other quite essential costs, which are not now provided or paid for by the state for any private litigants, such as process service fees, or service by publication, investigative and legal services?

The duties to its disadvantaged people of an affluent society, as represented by its public institutions, are being recognized more fully daily. Where the handicaps of poverty have resulted in unequal justice in criminal matters the courts have found in the equal protection clause a source of authority to correct the inequalities and to strike down criminal sanctions imposed on those denied equal protection.

Although with some hesitation, we conclude that the court should not, by resort to the Constitutional guarantees which for 100 years have been considered not to demand such state action, attempt to speed up the amelioration of the lot of the indigent by forcing the state to provide free access to the civil courts without payment of a relatively modest fee.[4] We should rather leave this to correction by the political process through legislative action, which may reach a more satisfactory result more speedily than the presently available machinery of the courts can effectively accomplish.[5]

---

[4] We are informed that in the case of *Davis* v. *Davis*, supra p. 6, the plaintiff has abandoned plans to appeal from the denial of her application to proceed in forma pauperis and intends to pursue her divorce immediately in the Superior Court at Bridgeport.

[5] See Note "Discriminations Against the Poor and the Fourteenth Amendment", 81 H.L.R. 435, 452 (1967).

Motion granted. Complaint dismissed.[6] Judgment may enter dismissing the action. No further order is necessary.

/s/ J. Joseph Smith
U.S.C.J.

/s/ M. Joseph Blumenfeld

/s/ T. Emmet Clarie
U.S.D.JJ.

July 16, 1968

[6] In view of the disposition of the motion to dismiss, we do not situted class. Nor do we find it necessary to discuss defendants' stituted class. Nor do we find it necessary to discuses defendants' contention that the state's particular interest in the preservation of the family entitles it to discourage divorce, except to point out that the legislation under attack reveals no such intention, since the fee is the same in divorce actions as in other civil actions.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Civil No. 12,513

[File Endorsement Omitted in Printing]

GLADYS BODDIE, BERTHA BARKER, ANN DE NICOLA, MARYANN DOZIER, BETTY ANN PEREZ, CATHERINE STRAIN, MARY WIERZBICKI, MAMIE WILLIAMS, MARY YEATON, and all other persons similarly situated

v.

THE STATE OF CONNECTICUT; EDWARD HORWITZ, Clerk of the Superior Court of Connecticut for New Haven County; JUDGE JOSEPH S. LONGO, Superior Court of Connecticut; JUSTICE JOHN P. COTTER, Court Administrator, Supreme Court of Connecticut

JUDGMENT—July 17, 1968

This cause came on to be heard before a three-judge court (Honorable J. Joseph Smith, United States Circuit Judge for the Second Circuit; Honorable M. Joseph Blumenfeld and Honorable T. Emmet Clarie, United States District Judges for the District of Connecticut) on defendants' Motion to Dismiss, and the Court having granted the said motion in its opinion filed July 17, 1968,

It is ORDERED, ADJUDGED and DECREED that the plaintiffs take nothing and that the action be and it is hereby dismissed.

Dated at New Haven, Connecticut, this 17th day of July, 1968.

/s/ Gilbert C. Earl
Clerk, United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Docket No. 12513

September 11, 1968

[File Endorsement Omitted in Printing]

GLADYS BODDIE, BERTHA BARKER, ANN DE NICOLA, MARYANN DOZIER, BETTY ANN PEREZ, CATHERINE STRAIN, MARY WIERZBICKI, MAMIE WILLIAMS, MARY YEATON, and all other persons similarly situated, PLAINTIFFS

vs.

THE STATE OF CONNECTICUT; EDWARD HORWITZ, Clerk of the Superior Court of Connecticut for New Haven County; JUDGE JOSEPH S. LONGO, Superior Court of Connecticut; JUSTICE JOHN P. COTTER, Court Administrator, Supreme Court of Connecticut, DEFENDANTS

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed September 12, 1968

I. Notice is hereby given that the abovenamed plaintiffs (except for Catharine Strain), hereby appeal to the Supreme Court of the United States from the final order dismissing the complaint entered in this action on July 17, 1968.

This appeal is taken pursuant to 28 U.S.C. § 1253.

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript all affidavits, pleadings and motions of the parties;

III. The following questions are presented by this appeal:

Did the State of Connecticut, by requiring these indigent plaintiffs to pay court fees and costs as a condition precedent to initiating divorce suits deny these indigent plaintiffs access to Connecticut courts, in violation of their

rights to petition for redress of grievances, to due process and to equal protection of the laws?

If so, may the State of Connecticut, as well as the individual defendants, be enjoined from continuing to interfere with plaintiffs' rights?

[Certificate of Service Omitted in Printing]

[Clerk's Certificate to Foregoing Transcript Omitted in Printing]

SUPREME COURT OF THE UNITED STATES

No. 1131 Misc., October Term, 1968

GLADYS BODDIE, ET AL., APPELLANTS

v.

CONNECTICUT, ET AL.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS—June 23, 1969

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

SUPREME COURT OF THE UNITED STATES

No. 1131 Misc., October Term, 1968

GLADYS BODDIE, ET AL., APPELLANTS

v.

CONNECTICUT, ET AL.

APPEAL from the United States District Court for the District of Connecticut.

ORDER NOTING PROBABLE JURISDICTION—June 23, 1969

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. The case is transferred to the appellate docket as No. 1553, and placed on the summary calendar.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1969 357100 30